

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE  
SUPREME COURT RULE 32  
AND OFFICIAL FORM J

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§  
§  
§

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BOVER

Before STEELE, Chief Justice, HOLLAND, BERGER, JACOBS, and RIDGELY,  
Justices (constituting the Court *en Banc*).

ORDER

This 13<sup>th</sup> day of Sept., 2005 IT IS HEREBY ORDERED that:

- 1) Rule 32 is deleted in its entirety and a new Rule 32 is promulgated as follows:

**Rule 32. Stays and injunctions pending appeal; security for such stays or injunctions.**

(a) *Stay or injunction pending appeal.* A motion for stay must be filed in the trial court in the first instance. The trial court retains jurisdiction over the initial motion and must rule on the initial motion regardless of whether the case is on appeal to this Court. A stay or an injunction pending appeal may be granted or denied in the discretion of the trial court, whose decision shall be reviewable by this Court. The trial court or this Court, as a condition of granting or continuing a stay or an injunction pending appeal, may impose such terms and conditions, in addition to the requirement of security, as may appear appropriate in the circumstances.

(b) *Stay in criminal proceedings.* The right to a stay of execution and bail on appeal in criminal cases shall be as provided by statute and by these Rules. On application for a stay of execution and bail, the provisions of any applicable statute must be met. Such an application may be heard by this Court. The party seeking a stay must file with the Court a stipulation of facts or such portion of the record as is necessary to sustain the application. The State may submit such portions of the record as it deems relevant.

(c) *Supersedeas bond or other security.* A stay or injunction pending appeal shall be granted upon filing and approval of sufficient security. Such security shall be presented to and approved or disapproved in the first instance by the trial court. The type, amount, and form of the security shall be determined in the first instance by the trial court, whose actions shall be reviewable by this Court. The security shall be filed with the clerk of the trial court who shall forthwith give notice thereof to the attorney for the appellee. The security shall not be approved until notice of appeal has been served on the appellee and filed in the manner provided under these Rules.

(i) *Type of security.* Security for a stay or injunction pending appeal shall be a supersedeas bond or other security. The trial court shall have the discretion to set a type of security other than a supersedeas bond, with the party seeking such other type of security having the burden to demonstrate the sufficiency of such other type of security.

(ii) *Amount of security.* With regard to a judgment or a portion of a judgment for a sum of money, the security shall ordinarily equal such sum of money and all costs and damages, including damages for delay. The trial court shall have the discretion to set the security at a lesser amount, with a party seeking the stay or injunction pending appeal having the burden to show that a lesser amount is sufficient in the circumstances.

(iii) *Form of security.* In a civil case the security shall remain in full force and effect unless the principal obligor prosecutes the appeal to effect, according to law and the Rules of this Court, and pays any judgment for a sum of money and all costs and damages, including damages for delay, and otherwise abides the decree if the principal obligor fails to make the principal obligor's plea good. A supersedeas bond shall be substantially in the form prescribed in Official Form J.

(d) *Bond in a criminal case.* In a criminal case, if this Court issues the certificate under 11 Del. C. Sec. 4502 in the first instance, the Court, in its discretion, may either determine the terms and conditions of release or remand the matter to the trial court for such determination. If the trial court issues the certificate under 11 Del. C. Sec. 4502, the amount of the bond and the surety, when fixed and approved by the trial court, shall be deemed to have been so fixed and approved by this Court. If either the defendant or the State seeks a change in the terms or conditions of release previously ordered by the trial court, the Court may, in its discretion, review and, if appropriate, modify the terms or conditions of release or, if additional evidence is required, remand, subject to review by this Court, the case to the trial court for the

limited purpose of conducting such review and making such changes as may be appropriate. Pursuant to Rule 19(c), the trial court shall make and report its determination within 30 days of the remand, unless some other time is ordered by the Court.

The principal obligor shall be bound to appear when directed by this Court or the trial court, to prosecute the appeal to effect according to law and the Rules of this Court, to pay all costs and otherwise to abide the judgment on appeal and the final judgment in the trial court.

(i) Justification by surety. Every surety shall justify by affidavit the property offered to secure the principal obligor's surety.

(ii) Forfeiture. if there is a breach of condition of a bond, this Court or the trial court may declare a forfeiture of the bail.

(iii) Setting aside. This Court or the trial court may direct that a forfeiture be set aside, upon such conditions as the Court may impose, if it appears that justice does not require enforcement of the forfeiture.

(iv) Enforcement. When a forfeiture has not been set aside, the trial court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the trial court and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. The liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail a copy to each obligor at the obligor's last known address.

(v) Remission. After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subparagraph (iii) of this paragraph.

(vi) Exoneration. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of defendant into custody.

2) Official Form J is deleted in its entirety and a new Form J is substituted in lieu thereof as follows effective immediately:

**PROPOSED REVISED FORM J**

**Form J. Supersedeas bond [Rule 32(c)].**

**IN THE .....[1] ..... OF  
THE STATE OF DELAWARE  
IN AND FOR ..... [2]..... COUNTY**

.....[3].....,	)	
	)	
Plaintiff,	)	Civil Action No. ...[4]...
v.	)	
	)	
.....[5].....,	)	
	)	
Defendant.	)	

**SUPERSEDEAS BOND**

KNOW ALL BY THESE PRESENTS, that .....[6]....., a corporation created, organized and existing under and by virtue of the laws of the State of .....[7]....., having its principal place of business at .....[8]....., and duly authorized to execute surety bonds in the amount and subject to conditions herein provided, is held and firmly bound as surety unto .....[9].....in the full and just sum of .....[10]..... Dollars (\$\_\_\_\_\_), to be paid to the said .....[11]....., its administrators, executors, successors, attorneys or assigns, to which payment well and try to be made it binds itself, its successors and assigns firmly by these presents.

Signed and sealed with the corporate seal of said surety this ..... day of .....,  
.....

WHEREAS, in the .....[1]..... Court of the State of Delaware, in and for .....[2]..... County, between .....[3]....., as plaintiff[s], and .....[5]....., as defendant[s], Civil Action No. .....[4]....., judgment was entered in favor of said .....[12]..... and

against said .....[13]....., for .....[14]....., from which judgment said .....[13]..... has appealed to the Supreme Court of the State of Delaware;

NOW, THEREFORE, the condition of this obligation is such that if the said .....[13]..... shall prosecute its appeal to effect and (i) shall satisfy the judgment in full together with costs, interest and damages for delay if for any reason the appeal is dismissed or if the judgment is affirmed or (ii) shall satisfy in full such judgment as modified and such costs, interest and damages as the Supreme Court or ....[1]....., or both, may adjudge and award, then this obligation shall be void; otherwise, it shall remain in full force and effect.

.....[6]..... hereby submits itself to the jurisdiction of the .....[1]..... and irrevocably appoints .....[15]..... as its agent upon whom any notice or papers affecting its liability on this bond may be served, and agrees that its liability on this bond may be enforced on motion without the necessity of an independent action and that such motion, with such notice thereof as that court may prescribe, may be served on .....[15]....., who shall forthwith mail copies to .....[6]..... at .....[8].....

.....  
Attorney-in-Fact

.....[6]..... is hereby approved, pursuant to .....[1]..... Rule 62 and Supreme Court Rule 32, as surety on this bond, and the form and sufficiency of the bond are also hereby approved.

Dated: .....

.....  
Judge

Insertions to Official Form J:

- [1] Lower court.
- [2] County of lower court.
- [3] Plaintiff's name.
- [4] Lower court civil action number.
- [5] Defendant's name.
- [6] Name of surety.
- [7] State in which surety was created.
- [8] Surety's principal place of business.
- [9] Obligee's name.
- [10] Amount of bond.

- [11] Obligee's name.
- [12] Winning party – "Plaintiff" or "Defendant" – as appropriate.
- [13] Losing party – "Plaintiff" or "Defendant" – as appropriate.
- [14] Amount of judgment.
- [15] Corporate agent.

3) The amendments are effective immediately.

BY THE COURT:

A handwritten signature in black ink, appearing to be "J. L. B.", written over a horizontal line.

Justice